IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1758

BRICKLAYERS FRINGE BENEFIT FUNDS, METROPOLITAN AREA, a voluntary unincorporated trust fund, and the DETROIT METROPOLITAN AREA EXECUTIVE COMMITTEE OF THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, AFL-CIO, a voluntary unincorporated labor organization,

Petitioners,

v.

NORTH PERRY BAPTIST CHURCH OF PONTIAC, a Michigan ecclesiastical corporation, WILLIAMSON COUNTY BANK, a Tennessee banking corporation, and B. R. THOMAS,

Respondents.

SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI

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Pursuant to Rule 24(5), the Bricklayers Fringe Benefit Funds, Metropolitan Area, et al., the Petitioners, submit this supplement to their Petition for a Writ of Certiorari.

I

On June 28, counsel for Petitioners received a letter from Benjamin T. Hoffiz, Jr., Esq., of Troy, Michigan, advising that he had discussed the Petition for a Writ of Certiorari with Doctor John Marine, the Pastor of the North Perry Baptist Church of Pontiac, one of the Respondents, who "concluded that the church will permit the Appeal Process without obtaining Appellate Counsel on the premise that

the United States Supreme Court will have before it the record of the Court of Appeals on which to determine whether it will grant an Appeal. Succintly [sic], the North Perry Baptist Church will not have representation, nor will an Attorney file an Appearance, while you seek Certiorari from the Judgment of the United States Court of Appeals for the Sixth Circuit."

II

Since this Court's decision in *Aldinger* v *Howard, Treasurer of Spokane County,* 427 U.S. 1, 96 S. Ct. 2413, 49 L.Ed. 2d 276 (1976), a number of courts have considered the exercise of pendent party jurisdiction in situations, such as the instant one,[1] where federal courts had exclusive jurisdiction over the federal count. A number of the courts have sanctioned the use of pendent party jurisdiction under such circumstances. See, e.g., *Ortiz* v *United States Government,* 595 F.2d 65 (C.A. 1, 1979), *Dick Meyers Towing Service, Inc.* v *United States,* 577 F.2d 1023 (C.A. 5, 1978), *Transok Pipeline Co.* v *Darks,* 565 F.2d 1150 (C.A. 10, 1977), and *Pearce* v *United States,* 450 F. Supp. 613 (D. Kan., 1978). The Ninth Circuit has, of course, reached the contrary result and has refused to allow exercise of pendent party jurisdiction under any circumstances. See, e.g., *Ayala* v *United States,* 550 F.2d 1196 (1977).

III

At page 14 (n. 10), of the Petition for a Writ of Certiorari, we stated that the federal concern with, involvement in and regulation of jointly administered trust funds, such as the one involved in this matter, "may fairly be characterized as pervasive." An example of another aspect of the pervasiveness of the regulation may be found in Judge Charles Joiner's opinion in *Central States Southeast and Southwest Areas Pension Fund, et al.* v *Hitchings Trucking, Inc., et al.,* ..... F. Supp. ....., 251 BNA Pension Law Reporter D-1 (E.D. Mich., July 20, 1979). In that case, Judge Joiner pointed out that ERISA mandates that employees be provided with benefits regardless of whether the fund collected the contractually required contributions from their employer:

> "ERISA was intended to stabilize the rights and liabilities involved in pensions established by collective bargaining. Congress in its findings and declaration of policy provided:
>
> " 'The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial . . . that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained . . . that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be

[1] Insofar as Count I of the Complaint (the count against the employer, George Morse) is concerned, the District Court had exclusive jurisdiction by virtue of Section 502(e) (1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.A. §1132(e) (1).

made and safeguards be provided with respect to the establishment, operation and administration of such plans . . . that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries . . . that minimum standards be provided assuring the equitable character of such plans and their financial soundness.' 29 U.S.C. §1001(a).

"Stability and protection requires assurance of adequate funding and the prevention of arbitrary termination rights. ERISA protects employees' rights to pension funds under pension trusts if the employees qualify. 29 U.S.C. §§1052, 1053 and 1054. Whether payments to the trust have or have not been made by the employer is not relevant in the determination as to whether or not an employee qualifies. See Labor Department Advisory Opinion Letter on Delinquent Contributions dated August 31, 1976, Opinion 76-89, 221 BNA Pension Reporter R-24. * * *

"A ruling by this court in an action between the employer and the fund could not adversely affect the rights of the employees to make claims against the fund when they became due, regardless of whether the employer has made payments or whether this court would have ordered the employer to make payments. It is not unlikely that they might prevail on the same theory that is being asserted in this case by the plaintiff.

"A ruling adverse to the plaintiff in this court would place the plaintiff in an anomalous position. It would have no defense whatsoever to the claims being made by the employees. As a result of this decision, it would be required to meet the financial burden of ERISA's guarantees in the form of pension payments without corresponding contributions

to the defendant's employees and similarly situated employees. As the plan covers several hundred thousand participants, with over 1400 contributing employers, the actuarial soundness of the fund would be compromised."

Conclusion

We again request that the petition for a Writ of certiorari be granted.[2]

Respectfully submitted,

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Dated: September 11, 1979.

[2]The Sixth Circuit recently decided another case involving the pendent party jurisdiction and applicability of Federal Rules of Civil Procedure 64 issues. *Carpenters District Council of Detroit, etc., et al.* v *George E. Morse, individually and d/b/a Residential Framers Co., et al.* (C.A. 6, #77-1071; Orders of June 13, 1979 and July 23, 1979). It is expected that a petition for a writ of certiorari from the Sixth Circuit's decision in that case will be filed with this Court by the end of this month.